

IN THE ARKANSAS DEPARTMENT OF POLLUTION  
CONTROL & ECOLOGY

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IN THE MATTER OF:

CEDAR CHEMICAL CORPORATION,  
WEST. HELENA, ARKANSAS

NO. LIS 91-118

(ARD990660659)

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AMENDED CONSENT ADMINISTRATIVE ORDER

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JURISDICTION

1. This Amendment Number 1 to Consent Administrative Order ("Amended Consent Administrative Order") is entered pursuant to authority of the Arkansas Remedial Action Trust Fund Act ("ARATFA"), Ark. Code Ann. § 8-7-508, as currently amended; the Arkansas Hazardous Waste Management Act ("AHWMA"), Ark. Code Ann. § 8-7-214; and the Arkansas Hazardous Waste Management Code (the "Code"). All terms contained within this document shall have the definitions as found in the above-referenced laws, unless the context plainly indicates otherwise.

2. The original Consent Administrative Order in this cause was approved for entry by the Director of the Arkansas Department of Pollution Control & Ecology ("ADPC&E") on July 11, 1991, and became effective July 12, 1991. Cedar Chemical Corporation, as owner and operator of the subject facility, was the sole respondent.

3. Paragraph 10.c of the original Consent Administrative Order contemplated the possibility that interim measures (in addition to implementation of the Removal Plan referred to in Paragraph 10.a) could be required pending completion of the Facility Investigation and Corrective Measures Study required under the terms of the original Consent Administrative Order.

4. The provisions of this Amended Consent Administrative Order shall apply solely to the implementation of a Supplemental Removal Plan described herein and shall be binding on Cedar Chemical Corporation, (the "Respondent", and on Wormald U.S., Inc., a Delaware corporation (the "Contributor"), in the manner specified herein.

STATEMENT OF PURPOSE

5. By entering into this Amended Consent Administrative Order, the mutual objectives of ADPC&E, Respondent and Contributor are to remove buried drums and contaminated soil believed to be



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located at two separate locations on the subject Site and to carry out a closure of such burial areas in a manner substantially identical to the Removal Work Plan referred to in Paragraph 3.a of the original Consent Administrative Order and as more particularly described in the Final Report of the implementation of said Removal Work Plan dated January 15, 1992, submitted to ADPC&E by Cedar Chemical Corporation, Respondent herein.

#### PARTIES

6. Unless further amended, the original Consent Administrative Order shall continue to be binding upon ADPC&E and Cedar Chemical Corporation as the Respondent. The terms of this Amended Consent Administrative Order shall be binding upon both Cedar Chemical Corporation and Wormald U.S., Inc., and their respective successors and assigns, with the obligations of such parties being specified herein. This Amended Consent Administrative Order shall control the work of all persons, agents, contractors and technical consultants acting under or for ADPC&E or the Respondent in carrying out the actions required hereunder.

7. The Respondent shall provide a copy of this Amended Consent Administrative Order to each contractor, subcontractor, laboratory and technical consultant retained by it to conduct any portion of the work performed pursuant to this Amended Consent Administrative Order prior to said contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted hereunder.

8. Any contract entered into by the Respondent for the propose of carrying out any actions required by this Amended Consent Administrative Order shall incorporate the requirements hereof pertaining to the work to be performed or services or materials to be supplied.

#### FINDINGS OF FACT

9. Based on available information regarding the Site, ADPC&E makes the following supplemental findings of fact, which are neither an admission by, binding upon, or conclusive as to the Contributor:

a. The Contributor, Wormald U.S., Inc. ("Wormald") is a Delaware corporation duly qualified to do business in the State of Arkansas. Wormald purchased 100% of the stock of The Ansul Company, which owned stock of Eagle River Chemical Corporation between September 1971 and November 1972.

b. Substantial quantities of dinitrobutylphenol, also known as dinoseb, were manufactured on the Site from approximately January 1972 through July 1972.

c. The Ansul Company acquired title to certain inventories of raw materials and finished goods located on the subject Site on November 15, 1972 as more particularly described in the sale document.

d. There is evidence indicating that two additional drum burial areas, in addition to the one identified in the Removal Work Plan, may exist on the Site, and that said areas may have been used for the burial of dinoseb products and other materials which were acquired by The Ansul Company in November 1972.

e. Respondent has represented that the remediation activities required herein can be substantially completed by May 8, 1992 such that the contaminated soil and debris which will be removed can be disposed of at a secure landfill prior to May 8, 1992, and Contributor has agreed to enter into this Amended Consent Administrative Order to assist Respondent in its efforts to expeditiously complete the activities required herein.

#### CONCLUSIONS OF LAW

10. Based upon the foregoing supplemental findings of fact, the Director, ADPC&E, makes the following supplemental conclusions of law which are neither an admission by, binding upon or conclusive as to the Respondent or Contributor:

a. Wormald U.S., Inc. is "person liable" for certain conditions on the subject Site as that term is used in Ark. Code Ann. § 8-7-508.

#### DETERMINATION

11. Based upon the foregoing supplemental findings of fact and conclusions of law, the Director, ADPC&E, has determined that:

a. There is a threat of release of a hazardous substance at the additional drum burial areas referred to herein.

b. It is necessary that the drums and any contaminated soil located in the additional drum burial areas referred to herein be removed from the Site and properly disposed of in a manner consistent with the Removal Plan referred to in Paragraph 7.g of the original Consent Administrative Order in this cause.

c. The actions agreed upon under the terms of this Amended Consent Administrative Order are in the public interest, are consistent with the National Oil and Hazardous

Substances Contingency Plan, 40 C.F.R. § Part 300, and are necessary to protect the public, health, welfare and the environment.

d. The actions agreed upon under the terms of this Amended Consent Administrative Order should be carried out by the Respondent, who currently owns the Site and operates the facility located thereon; and the Contributor should undertake remedial action by making a financial contribution toward the costs and expenses of remedial action to be undertaken by Respondent.

#### ORDER

12. IT IS THEREFORE AGREED AND ORDERED by consent of the Respondent, Contributor and ADPC&E as follows:

#### Additional Interim Measures

a. As an additional interim measure to achieve the purposes of the original Consent Administrative Order and the purposes of this Amended Consent Administrative Order, the Respondent shall, promptly following the effective date of this Amended Consent Administrative Order, retain a qualified contractor or contractors to excavate the addition suspected drum disposal areas identified in Exhibit A attached hereto and to remove all contaminated soil, debris and drums for off-site disposal, all in accordance with a supplemental Removal Plan substantially identical to the provisions of the Removal Plan referred to in Paragraph 7.g of the original Consent Administrative Order, as further described in the Final Report with respect thereto dated January 15, 1992, and submitted herein.

b. Within sixty (60) days after completion of the Supplemental Removal Plan, the Respondent shall submit to ADPC&E a detailed written report describing the activities undertaken to complete said plan, including all necessary and appropriate certifications and supporting information which is reasonably necessary for ADPC&E to evaluate and approve such report.

c. The terms of Paragraphs 10.j with respect to project coordinators; Paragraph 10.k with respect to notices and 10.l with respect to designation of additional representatives in the original Consent Administrative Order shall apply to this Amended Consent Administrative Order, except that any correspondence from ADPC&E to the Respondent pursuant to this Amended Consent Administrative order shall also include a carbon copy to:

Mr. Jim L. Julian  
CHISENHALL, NESTRUD & JULIAN  
2840 First Commercial Bank Bldg.  
400 W. Capitol  
Little Rock, AR 72201  
(Attorneys for Wormald U.S., Inc.)

Likewise, the provisions of Paragraphs 11 through 24 of the original Consent Administrative Order shall apply with equal force to this Amended Consent Administrative Order as to Respondent.

COVENANT NOT TO SUE, REOPENER  
AND RESERVATIONS OF RIGHTS

13. In consideration of the payment of Five Hundred Thousand Dollars (\$500,000.00), which Contributor agrees to make under the terms of this Amended Consent Administrative Order, and except as specifically provided in this paragraph, ADPC&E covenants not to sue or to take administrative action against Contributor for "Covered Matters". Such covenant shall take effect upon payment by Contributor to Respondent of the sum specified herein, and shall extend to Contributor, its employees, agents, successors and assigns, and does not extend to any other person. Contributor's obligation to make the payment specified herein shall arise at such time as Respondent notifies Contributor that a secure landfill, permitted to land dispose of the contaminated soil and debris has accepted all contaminated soil and debris required to be removed by this Amended Consent Administrative Order, and Contributor shall make payment within ten (10) days after receipt of such notice. In the event Respondent does not pursue the activities required under this Amended Consent Administrative Order within a schedule which will enable it to dispose of the contaminated soil and debris at a secure landfill prior to May 8, 1992, this Amended Consent Administrative Order shall be void as to Contributor.

"Covered Matters" shall mean any and all liability for causes of action arising under the Arkansas Remedial Action Trust Fund Act (ARATFA), Ark. Code Ann. § 8-7-501, et seq.; or the Arkansas Emergency Response Fund Act, (AERFA) Ark. Code Ann. § 87-401; the Arkansas Hazardous Waste Management Act (AHWMA), Ark. Code Ann. § 8-7-101; the Arkansas Solid Waste Management Act (ASWMA) Ark. Code Ann. § 8-6-101; and the Arkansas Water and Air Pollution Control Act (AWAPCA), Ark. Code Ann. § 8-4-101; relating to the obligations of Respondent under this Amended Consent Administrative Order.

Notwithstanding any other provisions of this Amended Consent Administrative Order, ADPC&E reserves the right to institute proceedings in a new administrative or judicial action, or to issue an administrative order in this action seeking to compel Contributor to perform response actions at the Site in addition to the financial contribution provided for herein, if

Respondent fails or refuses to perform its obligations under this Amended Consent Administrative Order after ADPC&E has taken efforts to secure compliance which are reasonable under the circumstances.

Contributor reserves all rights (including any right to contribution from Respondent or other responsible parties), defenses, claims, demands and causes of action which it may have with respect to any matter, action, event, claim, or proceeding relating to the Site, or otherwise should ADPC&E undertake such proceedings as to Contributor.

Nothing in this Amended Consent Administrative Order shall be construed as a settlement or cost sharing agreement as between Contributor and Respondent, and both Contributor and Respondent reserve all rights (including any right of contribution) against the other, or against any third party, reserve all defenses to such actions asserted against them, and reserve all other defenses, claims, demands or causes of action which each of them may have against the other, or any third party with respect to any matter, event, claim or proceeding relating to the Site, or otherwise. The payments by Contributor and/or the response action undertaken by Respondent shall not invoke any right to contribution protection as between Contributor and Respondent as provided by Ark. Code Ann. § 8-7-520(e).

IT IS SO AGREED AND ORDERED.

DATE: \_\_\_\_\_

CEDAR CHEMICAL CORPORATION

By: \_\_\_\_\_  
RESPONDENT

DATE: \_\_\_\_\_

WORMALD U.S., INC.

By: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
DIRECTOR, ARKANSAS DEPARTMENT  
OF POLLUTION CONTROL & ECOLOGY

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